

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

## **ORDER**

Plaintiff, Alonzo Kemp (“Plaintiff”), an inmate incarcerated at the State Correctional Institution at Mercer, Pennsylvania, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against Defendants The City of Pittsburgh Police and Officer David M. Sisak (“Defendants”). Plaintiff’s Complaint [ECF No. 4] seeks compensatory and punitive damages arising from the alleged violation of his rights under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution in effectuating the arrest that culminated in his current sentence. Plaintiff contends Defendant Sisak falsified material facts in an affidavit of probable cause supporting his arrest and ultimate conviction for various vehicle and drug charges. Plaintiff further alleges that Defendant The City of Pittsburgh Police failed to properly train, supervise or discipline its officers.

Defendants have filed a Joint Motion to Dismiss [ECF No. 11], contending that whether for false arrest or malicious prosecution, Plaintiff's action is barred by Heck v. Humphrey, 512 U.S. 477, 486-487 (1994), as is made evident by his currently pending petition for habeas corpus

asserting identical grounds for relief. Alternatively, Defendants contend that Plaintiff has failed to allege facts sufficient to state a cognizable cause of action against Defendant The City of Pittsburgh Police for its alleged conduct in failing to train, supervise or discipline its officers.

This case was referred to United States Magistrate Judge Maureen Kelly for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On July 6, 2012, the Magistrate Judge issued a Report and Recommendation, ECF No. 16, recommending that the Motion to Dismiss or in the alternative, Motion for Summary Judgment be granted as to both Defendants. The parties were allowed fourteen days to file written objections thereto, and Plaintiff has filed his objections to the Report and Recommendation [ECF No. 17]. Upon an independent review of Plaintiff's objections, the record and consideration of the United States Magistrate Judge's Report and Recommendation, which is adopted as the opinion of this Court, the following Order is entered:

AND NOW, this 29th day of August, 2012,

IT IS HEREBY ORDERED that the Motion to Dismiss or in the alternative, Motion for Summary Judgment, filed on behalf of all Defendants, ECF No. 11, is granted and that Plaintiff's action is dismissed. The Clerk shall mark the case CLOSED.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of

Appellate Procedure, if the parties desire to appeal from this Order, they must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.

BY THE COURT:

s/Nora Barry Fischer  
NORA BARRY FISCHER  
United States District Judge

cc: The Honorable Maureen P. Kelly  
United States Magistrate Judge

All counsel of record via CM/ECF

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